

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.12.2018

CORAM:

THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

CRL.O.P.No.26151 of 2017

And

CRL.M.P.No.9072 of 2018

CRL.M.P.Nos. 15034 & 15035 of 2017

1.M/s.Golden Gate Properties Ltd.,
Represented by its Authorized Signatory Mr.K.Partap,
No:820, 80 Feet Road, 8th Block,
Koramangal, Bangalore 560 095.

Also having office at:
No:308, V.V.Vintage Vourald,
Above the Coffee Day, 3rd Floor,
Somajiguda,
Hyderabad-500 082.

2.K.Pratap
Authorised Signatory Chairman and Founder
M/s.Golden Gate Properties Ltd.,

...Petitioners/Accused

Vs.

Balamurugan Thiagarajan

...Respondent/Complainant

PRAYER:

Criminal Original Petition filed under Section 482 of Cr.P.C, to call for the records pertaining to C.C.No.410 of 2017 on the file of Judicial Magistrate IV at Vellore and to quash the same.

For Petitioners :Mr.V.Karthik, Senior counsel for
Mr.Ananda Gomathy

Respondent :Mr.R.Gopinath Gaurav Chatterjee

O R D E R

This Criminal Original Petition has been filed seeking to quash the proceedings in C.C.No.410 of 2017, pending on the file of Judicial Magistrate IV at Vellore.

2.Mr.V.Karthik, the learned Senior Counsel appearing on behalf of the petitioner has raised the ground of limitation before this Court. According to the learned Senior Counsel, the cheque is dated 12.12.2016 and the same was presented for clearance on 16.12.2016. The same was dishonored on 17.12.2016 and thereafter, the statutory notice was issued on 16.01.2017. This statutory notice was served on the accused person on 19.01.2017. The period of 15 days expired on 03.02.2017. The cause of action therefore had arisen on 04.02.2017. Excluding the date on which the cause of action had arisen, even if one month is calculated from 05.02.2017, the limitation for filing the complaint will come to an end on 05.03.2017.

3.The learned Senior Counsel brought to the notice of this Court the date on which the complaint was actually filed. The complaint has been filed only on 06.03.2017. Therefore, the learned counsel would submit that the complaint is barred under Section 142 (i) (b) of Negotiable Instruments Act (hereinafter referred to 'the Act'). The learned Senior Counsel would submit that the Court below ought not to have taken cognizance of the complaint, since, the same is barred by limitation and admittedly in this case, no petition has been filed by the respondent to condone the delay in filing the complaint.

4.The learned counsel appearing for the respondent would submit that after the Court below took cognizance of the complaint, there was a delay in representation. Therefore, a petition was filed in C.M.P.No.1432 of 2017, before the Court below to condone the delay of 92 days in representing the papers and the delay was also condoned by the Court below, by an order, dated 17.07.2017. Therefore, the learned counsel would submit that Court below had applied its mind with regard to the issue of limitation and only thereafter it has taken cognizance of the complaint.

5.This Court has carefully considered the submissions made on either side.

6.There is no dispute with regard to the dates that have been mentioned herein above. It can therefore be seen that the complaint has been filed beyond the period of limitation prescribed under Section 142 (i) (b) of the Act. Admittedly, the respondent did not file any petition to condone the delay, as provided under the proviso to Section 142 (i) (b) of the Act. The Court below therefore ought not to have taken cognizance of the complaint which is barred by the period of limitation provided under the Act.

7.The learned Senior Counsel appearing for the petitioner

cited the judgment of the Hon'ble Supreme Court of India in ECON ANTRI LTD., V. M/S. ROM INDUSTRIES LTD., reported in 2014 (11) SCC 769. The relevant portion of the judgment is extracted hereunder:

42. Having considered the question of law involved in this case in proper perspective, in the light of relevant judgments, we are of the opinion that Saketh2 lays down the correct proposition of law. We hold that for the purpose of calculating the period of one month, which is prescribed under Section 142 (b) of the NI Act, the period has to be reckoned by excluding the date on which the cause of action arose. We hold that SIL Import, USA3 does not lay down the correct law. Needless to say that any decision of this Court which takes a view contrary to the view taken in Saketh2 by this Court, which is confirmed by us, do not lay down the correct law on the question involved in this reference. The reference is answered accordingly.

8. If the limitation is calculated as per the guidelines given by the Hon'ble Supreme Court in the judgment referred supra, it can be clearly seen that the complaint was filed out of time. Therefore, the Court below went wrong in taking cognizance of the complaint. Therefore, this Court has to necessarily interfere with the cognizance taken by the Court below.

9. In the result, the cognizance of the complaint taken by the Court below is hereby quashed and this Criminal Original Petition is allowed and the respondent is at liberty to workout his remedy as per the proviso to Section 142 (i) (b) of the Act. It is needless to say that the petitioner shall be heard before the petition to condone the delay is decided by the Court below. Consequently, connected miscellaneous petitions are closed.

WEB COPY

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

kal/tta

To

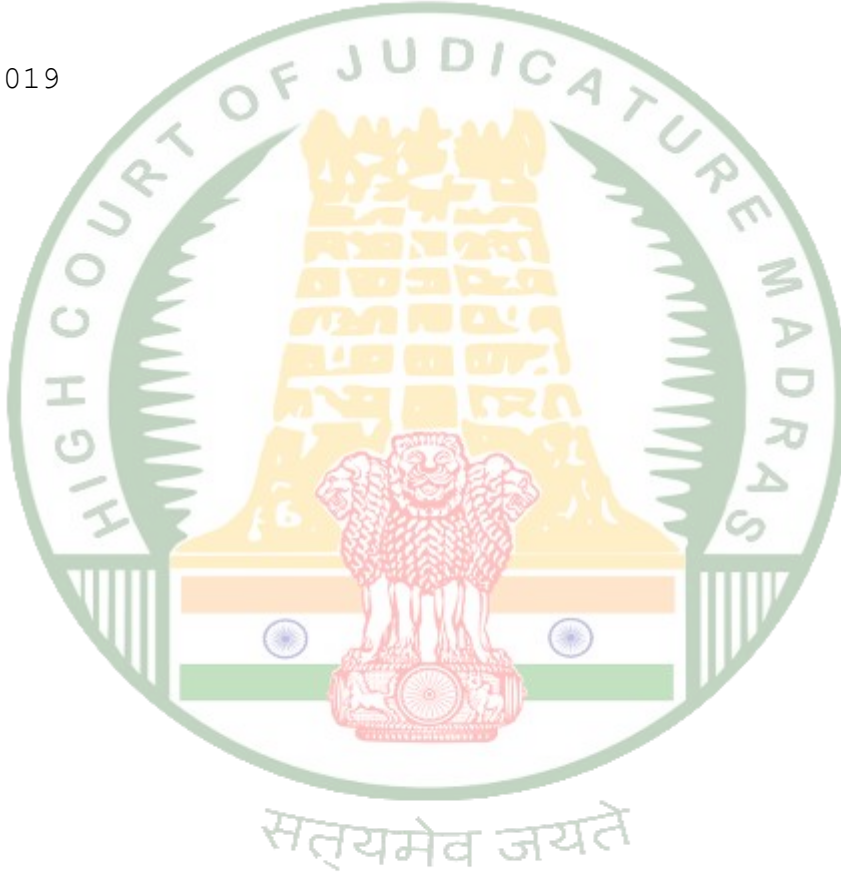
1. The Judicial Magistrate IV,
at Vellore
2. Do -Thro' The Chief Judicial Magistrate,
Vellore.

+1cc to Mr.R.Gopinath, Advocate, S.R.No.85636

+1cc to Mr.Ananda Gomathy, Advocate, S.R.No.85787

CRL.O.P.No.26151 of 2017

EV (Co)
CS/09/01/2019



WEB COPY